
(2014) 07 P&H CK 0619
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 22592 of 2010

Madhav Parsad

APPELLANT

Vs

Presiding Officer

RESPONDENT

Date of Decision : 03-07-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 17A, 2A

Citation : (2014) 07 P&H CK 0619

Hon'ble Judges : Gurmeet Singh Sandhawalia, J

Bench : Single Bench

Advocate : Ashok Tyagi, Advocate for the Appellant; P.K. Mutneja, Advocate for the Respondent

Final Decision : Allowed

Judgement

G.S. Sandhawalia, J.—Prayer in the present writ petition is to set aside the ex parte order dated 20.10.2000 (Annexure P-2) passed by the Labour Court, Gurgaon whereby, the case was to come up for ex parte evidence of management due to the absence of the workman and the subsequent ex parte award dated 22.12.2000 (Annexure P-3) whereby, the reference was disposed of on the ground that the workman had received his full and final settlement of his entire claim by receiving Rs. 1,774/-. Challenge has also been laid to the subsequent order dated 30.07.2008 (Annexure P-9) whereby, the application filed by the workman for setting aside of the said orders was dismissed.

2. A perusal of the paper book would go on to show that the workman issued a demand notice u/s 2A of the Industrial Disputes Act, 1947 (in short "the Act") on 25.03.1998 pleading that he had joined the respondent-management on 28.11.1996 on the post of a Helper and was drawing Rs. 1,600/- per month at that point of time. The management, on 24.03.1998, got forcible signatures on the resignation letters without any retrenchment compensation and it amounted to unfair labour practice. Thereafter, the matter was referred to the Labour Court in the year 1999 whereby, the ex parte proceedings were initiated against the

workman without his knowledge and he could not even submit his claim statement. Resultantly, the reference was disposed of, as noticed above. The workman thereafter filed his application on 04.11.2005 specifically pleading that the information of the same was not received by him till the filing of the application and that he had never given his consent for the full and final settlement. It was admitted by the management that no claim statement had been filed on his behalf and the only defence was that he had already taken his full and final settlement. It was admitted by the management that no claim statement had been filed on his behalf and the only defence was that he had already taken his full and final settlement of Rs. 1,774/-. The workman also appeared in support of his application and submitted his affidavit in support of the said averments and also submitted the affidavit of Ambika Pokhrel, who was working as a cashier in the Union of the company. One Puran Lal Chaudhry was also examined as PW-3, who was also member of the Union.

3. The Labour Court dismissed the application after taking into account the fact that the workman had initially put in appearance through his authorized representative but later did not turn up. It was further held that since the award had been published, therefore, the Court was not competent to set aside the same and the only remedy lay with the petitioner-workman to file a writ petition.

4. Admittedly, the Labour Court has no jurisdiction once the award has been published as has been held by the Apex Court in *Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others*, In the said case, it has been held that once the publication has been effected, then the Tribunal becomes functus officio. In the present case, the application was filed only on 04.11.2005 and award already stood published i.e. 5 years earlier. Therefore, the Labour Court was well justified in rejecting the application. The said view has also been followed by Apex Court in *Sangham Tape Company Vs. Hans Raj*, It was observed in *Grindlays Bank's* case (supra) that the provisions of the Act are for ensuring social justice to both employers and employees and to bring peace and harmony and maintain cordial relations between the parties. The proceedings were an endeavour to resolve the competing claim of both the parties with a purpose to find out a just and fair solution and where a party was faced with an ex parte award, the Tribunal had the power to set aside the ex parte award within the period prescribed under the Act. The relevant portion reads thus:-

5. In dealing with these contentions, it must be borne in mind that the Industrial Disputes Act, 1947 is a piece of legislation calculated to ensure social justice to both employers and the employees and advance progress of industry by bringing harmony and cordial relations between the parties. In other words, the purpose of the Act is to settle disputes between workmen and employers which if not settled, would result in strikes or lockouts and entail dislocation of work, essential to the life of the community. The scheme of the Act shows that it aims at settlement of all industrial disputes arising between the capital and labour by peaceful methods and through the machinery of conciliation, arbitration and if

necessary, by approaching the Tribunal constituted under the Act. It, therefore, endeavours to resolve the competing claims of employers and employees by finding a solution which is just and fair to both the parties.

6. We are of the opinion that the Tribunal had the power to pass the impugned order if it thought fit in the interest of justice. It is true that there is no express provision in the Act or the rules framed thereunder giving the Tribunal jurisdiction to do so. But it is a well-known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In a case of this nature, we are of the view that the Tribunal should be considered as invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary. We do not find any such statutory prohibition. On the other hand, there are indications to the contrary.

7 to 13. xxx xxx xxx

14.....That stage is not reached till the award becomes enforceable under s. 17A. In the instant case, the Tribunal made the ex parte award on December 9, 1976. That award was published by the Central Government in the Gazette of India dated December 25, 1976. The application for setting aside the ex parte award was filed by respondent No. 3, acting on behalf of respondents Nos. 5 to 17 on January 19, 1977 i.e., before the expiry of 30 days of its publication and was, therefore, rightly entertained by the Tribunal. It had jurisdiction to entertain it and decide it on merits. It was, however, urged that on April 12, 1977 the date on which the impugned order was passed the Tribunal had in any event become functus officio. We cannot accede to this argument. The jurisdiction of the Tribunal had to be seen on the date of the application made to it and not the date on which it passed the impugned order. There is no finality attached to an ex parte award because it is always subject to its being set aside on sufficient cause being shown. The Tribunal had the power to deal with an application properly made before it for setting aside the ex parte award and pass suitable orders.

5. However, perusal of the reply filed by the respondents would also go on to show that it was a common case of the parties that the petitioner had never appeared before the Court and nor any claim statement had been filed on his behalf and, therefore, the Labour Court should have put the workman to notice to file the claim statement so that the reference could be decided on merits. It is settled principle of law that the rules of procedure are handmaids of justice and cases have to be decided on merits and not on technicalities. The specific case of the petitioner is that he was away to his home place and he came after 5 years, after the ex parte award had been passed and moved the application. The specific case of the workman is that the signatures were taken by force and the resignation taken by force in fact amounted to unfair labour practice.

6. The order dated 22.12.2007 (Annexure P-3) would also go on to show that the matter had come up before the Lok Adalat and the statement of the management had been accepted that the petitioner has settled his dispute in full and final settlement of his entire claim and received Rs. 1,774/- and on the basis of the receipt, the reference was disposed of as per the settlement. The Division Bench of this Court in K.K. Rattan Vs. Presiding Officer, Labour Court and Others, has held that reference has to be decided on merit. Thus, this Court is of the opinion that the reference was only disposed of on the statement of the management and dispute had been adjudicated on merits.

7. In such circumstances, this Court is of the opinion that the matter should be heard on merits rather than the workman being condemned unheard.

8. Accordingly, the writ petition is allowed. The impugned orders dated 20.10.2000 (Annexure P-2), 22.12.2000 (Annexure P-3) and 30.07.2008 (Annexure P-9) are quashed. The parties are directed to put in appearance before the Labour Court, Gurgaon on 31.07.2014.

9. A copy of the same be forwarded to the Labour Court, Gurgaon for information and necessary action.